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NUCLEAR ENERGY INSTITUTE

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May 19, 1995

U.S. Department of Energy
c\o Ms. Lois Smith
TRW Environmental Safety Systems
2650 Park Tower Drive
Suite 800
Vienna, VA 22180

**SUBJECT:** Comments on Section 180(c) Program Proposals
(60 *Federal Register* 99, January 3, 1995)

Dear Ms. Smith:

NEI commends the Department of Energy (DOE) for its efforts to utilize an interactive and open process with all potentially interested parties to carry out its Congressionally mandated requirement to provide training and technical assistance to States and Indian Tribes per section 180(c) of the Nuclear Waste Policy Act (NWPA), as amended. We appreciate this opportunity to respond to the questions posed by DOE in the Federal Register notice (60 FR 99, January 3, 1995) regarding implementation mechanisms for carrying out 180(c) responsibilities.

NEI represents all the utilities that are holders of contracts with DOE for disposal of spent nuclear fuel under the NWPA. To date, electric utilities and their customers have provided the vast majority of the $11 billion that has been committed to the Nuclear Waste Fund, which will be the source of funding for DOE's implementation of the training and technical assistance program under section 180(c) of the NWPA.

Federal regulation of spent nuclear fuel transport is extremely comprehensive, covering such topics as packaging, prenotification, choice of routes, protection of schedule information from unauthorized disclosure, inspections and driver training. As a result of this extensive regulation, the safety record for spent fuel transportation is excellent, and unmatched by that of any other hazardous material routinely shipped in this country. There has never been an accident in over 20 years of spent fuel shipment that has resulted in a release of radiation, and the risk of such an accident occurring is extremely remote. It is within this context that DOE should consider the extensions of the training and technical program.

Radioactive materials is a subset of hazardous materials regulated in transportation by the Department of Transportation (DOT). DOT established a registration and fee program to fund States to develop emergency response capabilities for all hazardous materials, including radioactive materials, in response to the Uniform Safety Act (HMTUSA). In fact, DOT recently proposed (60 FR 5822, January 30, 1995) to revise the fee schedule to require shippers of highway route controlled quantities of radioactive materials to pay the maximum yearly fee if the shipper made a single shipment of those materials in the previous year. This means electric utilities are contributing to two programs to fund training for emergency response to radioactive materials incidents, the HMTUSA and NWPA. DOE's program to provide funds to States and Indian Tribes along the transportation routes under the NWPA should contain sufficient controls to ensure funds are only provided to increment existing programs when those programs are demonstrated to be incapable of responding to radioactive materials transportation incidents. We believe NWPA funding under the first option, "use of established Federal agency programs," discussed in the draft options paper referenced in the Federal Register notice is the best option to avoid wasteful duplication of expended federal funds.

Similarly, some utilities are currently subject to fee assessments under State or local programs that fund emergency preparedness for transportation incidents. We strongly encourage DOE to make the extent of funding already provided under State or local programs a criterion for determining eligibility for any additional funds to States or Indian Tribes under 180(c), as DOT currently does under their program for funding States to develop emergency preparedness and response capability. This is necessary to avoid wasteful duplication of effort and expense.

DOE should also ensure that the mechanisms used for funding States and Indian Tribes foster development of cooperative agreements among affected jurisdictions to implement emergency response planning. Cooperative agreements have the potential to result in more efficient and more effective emergency response programs because of the requirement for coordination that is inherent in establishing these agreements. That coordination can result in better communication, resource sharing and cooperation between localities and States putting the agreements together.

Lastly, funding mechanisms utilized by DOE should take into account the fact that State, local, and Indian Tribe response activities for spent nuclear fuel shipments will be for those first-on-the-scene type activities only. DOE and/or its contractors and other federal agencies will be available to assist the first responders within a short period of time. We also urge DOE to give further consideration to the appropriate timing of training funding. If the training is conducted too far in advance, considerable retraining will be required because of the high turnover of first responder personnel. Consequently we do not believe that funding should be provided to States or Indian Tribes along a shipping route more than 3 years prior to

ENCLOSURE

Response of the Nuclear Energy Institute

DOE's Notice of Inquiry
Safe Transportation and Emergency Response Training:
Technical Assistance and Funding, 180(c)
(60 *Federal Register* 99, January 3, 1995)

## Which option is the least administratively burdensome?

Use of established Federal agency programs, modified as necessary, appears to be the least administratively burdensome option for DOE to pursue. DOE should work with DOT to modify existing grant programs under the RSPA program to provide incremental funding and technical assistance, where necessary, to States and Indian Tribes for emergency preparedness and response for shipments of spent nuclear fuel. This option also has the potential to be less administratively burdensome for applicants for funding. Presumably the issues of program overlap and duplication or inconsistencies between and within Federal agency programs should be worked out by the agencies up front in designing the program, resulting in a single coordinated resource for States and Indian Tribes to utilize in establishing their emergency planning and response programs.

We recognize that it may be necessary to establish separate programs for funding affected Indian Tribes, but we believe the administrative efficiencies realized for the agencies and the States still make use of established federal agency programs the best option.

## Which option offers the greatest flexibility for recipients?

Use of established Federal agency programs would appear to offer adequate flexibility to recipients because the funds are delivered directly to States which then arrange for training and technical assistance in a manner that can best satisfy their responsibilities. Presumably this would be carried out in the same manner as programs for other hazardous materials, i.e., a combination of use of existing Federal training programs (these programs could be readily expanded to include transport of spent nuclear fuel), use of associations providing training and advice, or contracting through private industry for training. DOE would be expected to assist other organizations by providing necessary information to expand existing programs. Cooperative agreements in existence between States and localities and industry and regional centers for emergency response could be preserved under this approach and if necessary new agreements could be created.

Use of established Federal agency programs appears to be the most efficient use of funds. If DOE develops programs to independently issue grants or provide technical assistance, use of contractors to perform the work, increased administrative costs, and program inefficiencies are likely.

**What eligibility criteria do similar funding and training programs use?**

The eligibility criteria established by DOT for hazardous materials public sector training and planning grants are simply that the applicant be a State or Indian Tribe. These eligibility criteria are in conformance with language in the Nuclear Waste Policy Act that directs DOE to grant funds to States and Indian Tribes. However, a modification to the HMTUSA funding procedures would be needed to state that incremental funding will be provided as necessary from the funds accrued under the Nuclear Waste Policy Act only to States or Indian Tribes through whose jurisdictions spent nuclear fuel would be shipped. States, in turn, should be confined under the funding mechanisms to only making disbursements directly to those local jurisdictions through which spent nuclear fuel will be shipped.

**What formulas exist for division of funds among eligible parties?**

DOT's regulations governing disbursement of funds for public sector training and planning, 49 CFR Part 110.30(b)(3), states that at least 75% of Federal funds awarded to states shall be made available to local communities for planning. The 75% requirement would also suit DOE's program to determine the amount of funds that can be used by the States in carrying out its program. Beyond that requirement, States should be permitted flexibility to administer funds in the most productive manner, for example, if emergency response is currently carried out through regional agreements with other States, associations or organizations, this mechanism can also serve community preparedness for transport of spent nuclear fuel. If the funds need to be distributed differently because of the different concentration of shipping of hazardous material versus spent nuclear fuel, then a different distribution would be acceptable.

The Western Governor's Association has proposed draft regulations that recommend a formula that keys the bulk of allocations to the total number of shipments multiplied by miles traversed through a State's or Indian Tribe's lands by spent nuclear fuel shipments. We disagree with the underlying premise that those States or Indian Tribes receiving more traffic are automatically in need of more extensive programs to address emergency responses to spent nuclear fuel incidents. Any State that qualifies should have capability to respond to spent nuclear fuel transportation incidents. Programs for funding should carefully assess the current status of programs and provide funding only for the incremental funds and technical assistance necessary to expand programs to include emergency preparedness and response for spent nuclear fuel.

**What restrictions should apply to the use of funds?**

DOT's regulations at 49 CFR Part 110 provide a good model for regulations for providing technical assistance and funding of States for emergency preparedness and response to spent nuclear fuel transportation incidents. DOT's regulations require applicants to describe existing programs and explain how the requested funds would supply necessary improvements to the program. In addition, it includes provisions for monitoring program effectiveness. These components are necessary in our view to ensure that there is coordination among existing programs and that funds are used appropriately and effectively to augment these programs only where necessary to expand existing programs to address the special circumstances of emergency response encompassing spent nuclear fuel. DOE should begin by assessing the DOT's program and adopting it wherever it does not conflict with statutory requirements placed on DOE by the NWPA. In addition, the DOT portion of the program would be expanded where necessary to permit purchasing radiation monitoring equipment, personal protection equipment, and programs for equipment maintenance and calibration where necessary. (The DOT program does not permit equipment purchase for other than training uses.)

**How may funds be used in similar programs?**

As mentioned above, industry is suggesting the DOT program be used for DOE's program to provide training and technical assistance funds to States and Indian Tribes as provided under section 180(c) of the NWPA. It may be necessary to deviate from DOT's program in certain areas, i.e., DOE should permit purchasing of personal protective and monitoring equipment as well as maintenance and calibration services for the monitoring equipment.

**What should be included under the term "technical assistance?"**

Technical assistance should be defined as proposed by DOE in the draft options paper, dated November 1992, as "advice, training assistance and equipment." DOE participation to give advice or training assistance should be limited to responding to requests to augment existing federal, State or private initiatives to develop appropriate training and response programs. DOE should only resort to developing new training programs if it is apparent that there is no other entity prepared or qualified to deliver the services. Provision of equipment should be limited to personnel radiation protection equipment, detection equipment, and services to maintain and calibrate that equipment. If DOE adapts DOT's programs to permit funding for specified equipment under training, there is no longer a necessity to distinguish between funding for training versus funding for technical assistance.

**Based on past experience, what types and scope of training activities would be appropriate for implementation under Section 180(c)?**

DOT provides a list of eligible activities for training in 49 CFR 110.40(b). This list, with the addition of certain types of equipment, is very appropriate. DOE should consult with DOT regarding their experience in implementing the DOT's program.